IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

CRP.No. 1443 of 2004(D)

AGAINST THE ORDER DATED 12/07/2004 IN EA 156/04 IN EP 34/03 IN OS.149/1986 of PRINCIPAL SUB COURT,KOLLAM

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REVN. PETITIONER/DECREE HOLDER:

BRIJITH ANTONY @ LETHA ANTONY,
D/O.NEMSIOUS, RESIDING AT SRIMANDIRAM,
VADAKKUMBHAGOM VILLAGE, KOLLAM.

BY ADV. SRI.K.SUBASH CHANDRA BOSE

RESPONDENTS/RESPONDENTS 1 TO 6:
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1. NIRMALA DANIEL, NIRMAL BHAVAN,
OOLAYIL, PALACE WARD, KOLLAM.

2. THRESIDAM PHILIP, VAZHAKKUNNEL,
KARUVATTA, ADOOR.

3. REBAKKA PAUL, KANDATHIL VEEDU,
VADAKKUMBHAGOM, KOLLAM.

4. J.ROMANCE,
LILLY COTTAGE, VADAKKUMBHAGOM,
KOLLAM.

5. J.JARAWAS, LILLY COTTAGE,
DO. DO.

6. ROSELY JARAWAS,
DO. DO.

BY ADV. SRI.GEORGE VARGHESE (MANACHIRACKEL), CAVEATOR
SRI.ALEX N.MATHEW (KOLLAM)
SRI.H.RAMANAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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C.R.P. No.1443 OF 2004

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Dated this the 26th day of July, 2007

O R D E R

This revision petition is preferred against the order of the Principal Sub Court, Kollam in E.A.No.156 of 2004 in E.P.No.34 of 2003 in O.S.No.149 of 1986. It is submitted that the final decree has been passed and the petitioner in the E.A. moved an application for appointment of a Commissioner to remove the obstruction to a way. Plot No.8 is the way set apart by the Commissioner in the final decree proceedings. The court below dismissed the application on the ground that appeal is preferred against the final decree. If there is no stay of the execution of the final decree, then just because an appeal is filed, the court cannot refuse to entertain an application, if it is otherwise entertainable. What is sought to be implemented is the final decree of the court which is still in force.

It is submitted that the 2nd respondent is dead in January, 2007 and as the rights had been purchased by the 5th respondent, there is no necessity to implead legal representatives of the 2nd respondent. Therefore it is recorded and the matter is disposed of as follows: The order passed by the court

below is set aside and the court is directed to consider the matter afresh after hearing both sides. I make it clear that if there is no stay passed by the appellate court regarding the execution of the decree, the court has to pass orders in accordance with law after hearing both sides, within two months from today. Parties are directed to appear before the court below on 13.8.2007.

M.N.KRISHNAN, JUDGE

Cdp/-